

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Appeal-S-3648-SB of 2012 (O&M)

Date of Decision: 16.10.2019

Mubin @ Rama son of Ismile
..... Appellant

Versus

State of Haryana
..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Sarfraj Hussain, Advocate for the appellant.

Mr. Saurabh Mago, Assistant Advocate General, Haryana
for the respondent/State.

MAHABIR SINGH SINDHU, J.

Present appeal has been filed against the impugned judgment and order dated 26.10.2012, passed by learned Additional Sessions Judge, Rewari (*hereinafter referred as 'trial Court'*), vide which, the appellant has been convicted and sentenced under Sections 395 and 342 of the Indian Penal Code (*for short 'IPC'*) in the following terms:-

Conviction Under Section(s)	Sentence	Fine	In default of payment of fine
395, IPC	Rigorous imprisonment for a period of <u>five</u> years	₹ 1000/-	Rigorous imprisonment for a period of <u>six months</u>
342, IPC	Rigorous imprisonment for a period of <u>one year</u>	₹ 500/-	Rigorous imprisonment for a period of <u>one month</u>

Both the aforesaid sentence were ordered to run concurrently.

Prosecution of the appellant was initiated on the basis of a written complaint dated 07.11.2010 (Ex.PC), made by Kailash Chand (PW-5), alleging that he is running a Petrol Pump in the name and style of Aravali Filling Station at Kund. Today i.e. 07.11.2010 in the night at about 12:30 AM, he received a telephonic call from his salesman to the effect that at about 12:00 AM, a white coloured Max vehicle came and got filled the diesel worth ₹ 500/-. Immediately thereafter, salesman-Virender (PW-8) was put in the vehicle and miscreants snatched the money from his pocket. Another salesman, namely, Lalan was confined in a room and he was also robbed while taking away the money from his pocket. The miscreants tried to break open the lock of Godrej Safe, but on failure, took away the same along with an amount of ₹ 1,96,000/-, lying therein and thereafter, put the Safe in their vehicle. The miscreants looted a total sum of ₹ 2,06,300/- including ₹ 10,300/- from both the salesmen. They were ten in numbers and out of them, nine were in the age group of 25 years, whereas one was of more than 40 years. From their dialects, they seem to be from Mewat area. The above facts were disclosed by both the salesmen. The looted amount was calculated after visiting on the spot and taking into consideration the cash details as well as totalizer of the cash machine. The miscreants remained at the Petrol Pump for about half an hour and during this period, no customer visited to get the fuel. Some of the miscreants were having country made revolver and remaining armed with *Rods*. In case identification parade is conducted, salesmen can identify them. On the basis of above complaint, police proceedings (Ex.PC/1) were conducted by ASI Suraj Bhan (PW-11) and a formal FIR No.252 dated

07.11.2010, under Sections 395, 342 of the IPC as well as Section 25 of the Arms Act, 1959 (Ex.PQ) (*for short 'Arms Act'*) was registered at Police Station Khol, District Rewari and endorsement (Ex.PQ/1) was made to that effect. Thereafter, investigation started in the matter. Photographs of the place of occurrence; rough Site Plan of place of recovery of Chest (Ex.PL) as well as rough Site Plan of place of occurrence (Ex.PJ) were prepared. On 07.11.2010, a telephonic information was received in Police Station Sadar Alwar to the effect that a Godrej currency chest, broken by gas-cutter, was lying under the Chirkhana bridge on Bhiwadi road next to Bus Stand in an abandoned condition, which was taken into possession by SHO, Sadar, Alwar under the provisions of Section 102 Cr.P.C. and an application was moved by him before learned Judicial Magistrate, Alwar in this regard for passing the necessary orders. Thereafter, on receiving information in Police Station Rewari, complainant along with police officials visited Police Station Sadar, Alwar and the Currency Chest was identified by the complainant, vide memo dated 08.11.2010 (Ex.PD) and an order dated 09.11.2010 was passed by learned Judicial Magistrate, Alwar (Rajasthan) for handing over the Currency Chest to PW-11 ASI Suraj Bhan, Police Station Khol. The same was taken into police possession in this case, vide memo dated 09.11.2010 (Ex.PE) and a receipt in this regard was executed on 09.11.2010 (Ex.PB). The Max Vehicle, used in the commission of crime, was also taken into police possession in this case, vide memo dated 18.11.2010 (Ex.PA).

Co-accused/convict Saleem was interrogated by ASI Vijaypal (the then Head Constable) in FIR No.187 dated 20.10.2010, under Sections 379 and 420, IPC, registered at Police Station Rampura and he revealed by way of

disclosure statement dated 03.12.2010 regarding his involvement along with other co-accused including the appellant in the present case as well as other criminal cases and was taken into custody in this case also. Thereafter, he was interrogated in the present case by ASI Ved Parkash (PW-12) and suffered a disclosure statement dated 18.12.2010 (Ex.PM) and got demarcated the place of occurrence, vide memo (Ex.PN). Another co-accused-Mubin son of Jaimal was arrested on 11.01.2011 by ASI Sarjeet Singh, upon interrogation, suffered a disclosure statement dated 11.01.2011, admitting his involvement along with other co-accused including the present appellant and in pursuance thereof, demarcated the place of occurrence as well as got recovered the bundles of currency notes along with cheque and Invoice. Rough Site Plan dated 11.01.2011 of the place of recovery of Chest was prepared by ASI Sarjeet Singh. Scaled Site Plan dated 09.02.2011 of place of occurrence was also prepared.

On 23.04.2012, appellant-Mubin @ Rama was taken on remand by S.I. Desh Raj (PW-9) and during interrogation, appellant suffered a disclosure statement (Ex.PG) regarding his involvement in the present case and in furtherance thereof, demarcated the place of occurrence, vide memo (Ex.PH).

Statements of witnesses were recorded under Section 161 Cr.P.C. and after completion of the investigation, report under Section 173 Cr.P.C. was prepared and submitted before the Court of competent jurisdiction and copy thereof was supplied to the appellant. Since the offence under Section 395, IPC was triable by the Sessions Court, therefore, learned Illaqa Magistrate committed the case to learned Sessions Judge, Rewari and the same was assigned to learned trial Court. After taking into consideration the

material available on record, learned trial Court, *prima facie*, found the commission of offences punishable under Sections 395 and 342, IPC by the appellant and was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

In order to prove the charges, prosecution examined 14 witnesses who are as under:-

<i>PW-1</i>	<i>Mahesh Kumar, Ahlmad</i>
<i>PW-2</i>	<i>H.C. Suresh Kumar</i>
<i>PW-3</i>	<i>Constable Mukesh Kumar, P.S. Dharuhera</i>
<i>PW-4</i>	<i>Constable Naresh Kumar, P.S. Kotwali, Alwar (Rajasthan)</i>
<i>PW-5</i>	<i>Kailash Chand, complainant</i>
<i>PW-6</i>	<i>Lalan, salesman</i>
<i>PW-7</i>	<i>Sunil Kumar @ Sonu</i>
<i>PW-8</i>	<i>Virender, salesman</i>
<i>PW-9</i>	<i>S.I. Desh Raj, Police Station Khol</i>
<i>PW-10</i>	<i>Mukesh Kumar, Photographer</i>
<i>PW-11</i>	<i>ASI Suraj Bhan</i>
<i>PW-12</i>	<i>ASI Ved Parkash</i>
<i>PW-13</i>	<i>ASI Bhisham Kumar</i>
<i>PW-14</i>	<i>HC Manoj Kumar</i>

PW-1 Mahesh Kumar, Ahlmad deposed that he brought the original file pertaining to Sessions Case No.10 of 2011 arising out of the present FIR and decided by learned Additional Sessions Judge, Rewari, vide judgment and order dated 20.05.2011, titled as 'State Versus Saleem etc.'.

PW-2 HC Suresh Kumar, Rewari deposed that on 18.11.2010, he was posted as MHC, Police Station Rampura and on that day, ASI Bisham Kumar had taken into possession a Max vehicle No.HR-47-B-2296 in the present case vide memo (Ex.PA), which bears his signature and the said

vehicle was taken into possession in FIR No.187 of 2010, under Section 379, P.S. Rampura. Further stated that he has seen the original file of case titled as 'State *Versus* Salim etc.' and the original memo is already on record as Ex.PP.

PW-3 Constable Mukesh deposed that on 07.11.2010, he was posted in Police Station Khol and on that day, he handed over the Special Report of this case to Illaqa Magistrate as well as senior police officers without any delay.

PW-4 Constable Naresh Kumar, Police Station Kotwali, Alwar, Rajasthan deposed that on 09.11.2010, he was posted at P.S. Sadar, Alwar and on that day, ASI Suraj Bhan, Police Station Khol had taken into possession one broken Safe, vide receipt (Ex.PB), which was already taken in police custody under Section 102 Cr.P.C. by Sadar Police, Alwar.

During cross-examination, this witness stated that he was not Investigating Officer in this case and his statement was recorded by the I.O.

PW-5 Kailash Chand deposed that he is the owner and running a Petrol Pump in the name and style of Aravali Filling Station at Narnaul-Rewari road, Kund/Majra. Virender and Lalan were working as salesmen. On 07.11.2010 at 12:30 AM in the night, he received a telephonic call from Virender on his mobile to the effect that some miscreants had looted the petrol pump and taken away the currency chest along with ₹ 1,96,000/-, lying therein as well as ₹ 10,300/- from them. Salesman also stated that assailants came in a white coloured Max jeep. When complainant reached at Petrol Pump, he was given the entire details of the occurrence. Consequently, he moved an application (Ex.PC) to the police regarding the loot of ₹ 2,06,300/-. Salesman

also disclosed that miscreants were young and were using Mewati dialect and they were total 8/10 in numbers. On 08.11.2010, he received an information from the local police and on their asking, he accompanied to Police Station Sadar, Alwar and was told that safe had been recovered by the police officials of Police Station Sadar, Alwar and he was required for the purpose of identification of the same. He accompanied with the police officials of Police Station Khol with the keys of Safe to Police Station Sadar, Alwar. Upon reaching there, he identified the same and it was found that the chest belongs to him and had been taken away from his Petrol Pump, which was broken by a gas-cutter, but the locks of the same were intact. He identified the chest (Ex.P-1), present in the Court. Memo was prepared regarding the identification of currency chest, which is Ex.PD and the same was signed by him as well as HC Dinesh Kumar as attesting witness. The chest was taken into possession in terms of memo (Ex.PE), signed by him as well as *Malkhana* Incharge, Police Station Sadar, Alwar.

During cross-examination, this witness stated that application (Ex.PC) was moved on hear-say basis and which was written in the presence of Superintendent of Police after calculating the total sale of petroleum. Further stated that as a matter of practice, a chart for the sale of petroleum products is to be prepared on daily basis and reconciliation of sale as well as the cash collected is done in the evening by him with the assistance of Manager before leaving the Pump. Approximately sale of ₹ 3 Lakhs is made within 24 hours on daily basis. Also stated that sale register and the chart were not given by him to the police because they never demanded, however, voluntarily stated that S.P., Rewari had seen the same during night. Further

stated that he is having residence at Rewari as well as Kund, but his family stays at Rewari. He does not carry the cash at the evening to home, rather it is kept at Pump over night and the same is taken straightway to the bank i.e. State Bank of India, Branch Rewari. He admitted that collection details of cash denomination are not maintained by the staff. At this stage, Ex.P-1 was shown to the witness in the Court and he acknowledged that the slip on the currency bundle is not stapled. Voluntarily stated that it is not done as a matter of policy and the seal figuring at point 'A' on the label has been inscribed with the aid of stamp and he had not handed over the stamp to the police and the same is still with him. He further stated that account number, mentioned at point 'B', is in his handwriting. This witness further stated that on the date of occurrence, he had left the petrol pump at about 10:30 PM and the accounts are maintained by the Manager-Om Parkash, but he was not associated by the police as he was not available at that time during night. The size of the Safe is 2 x 2 and 1.5 feet and its weight is approximately 500 Kgs. Further stated that salesman told him that assailants were 10 in number, but he had not disclosed the names of the assailants. Chest was taken into possession from Police Station Sadar, Alwar.

PW-6 Lalan deposed that he is working as a salesman at Aravali Filling Station, owned by Kailash Yadav. Virender is his co-worker. On 07.11.2010 in the midnight at about 12 AM, he along with Virender was on duty at Filling Station. At that time, a Max Jeep came there and Virender went outside the office to fill the diesel in that vehicle. When Virender demanded money for the diesel, then he was overpowered by the occupants and was forcibly put in the Max vehicle. Thereafter, miscreants entered the office and

he was also overpowered at gun point and ₹ 6000/- along with mobile were snatched by them. He was wrongfully confined in the adjoining room and miscreants also snatched ₹ 4300/- from Virender. Miscreants put the currency chest into the Max vehicle and fled away towards Rewari side. During this period, nobody from the neighborhood came there. After that, Virender made a telephonic call at 100 number and also intimated the owner of the petrol pump. Miscreants made me as well as Virender to sit in the jeep and gave beatings. After some distance, both were thrown from the running jeep and miscreants fled away towards Rewari side. This witness further stated that he has seen the accused present in the Court today and he identified him as one of the miscreants, who had looted the chest from the Petrol Pump and beaten them.

During cross-examination, this witness stated that he remained present round o'clock on duty at the petrol pump and also stayed there. He cannot tell the number of the alleged Max jeep, but it came from Narnaul side and 10-12 persons were sitting in the Jeep. Further stated that police called him at Rampura Police Station after recording his statement under Section 161 Cr.P.C. to identify the Max jeep.

PW-7 Sunil Kumar deposed that on 07.11.2010, he was working with the Hotel, owned by Sanjay near Aravali Filling Station and on that day, at about 12 AM in the night, he had gone for drinking water in the said Filling Station, then accused pointed weapon towards him and locked him inside the office of Petrol Pump. He tried to run away, but one miscreant remained standing near him in the office. At this stage, on the asking of learned P.P.,

this witness was declared as hostile by learned trial Court and allowed to be cross-examined.

During cross-examination by learned Public Prosecutor, this witness heard the statement (Ex.PF) and stated that he never made such statement to the police. Further deposed that he has not stated to the police that he has seen the miscreants, put in cash chest from petrol pump to Max jeep and he had read the registration number of Max jeep up to 'RJ' and could not read further because they were written in Hindi. Witness was confronted at portion A to A of the statement (Ex.PF), where it is so mentioned. Further stated that he did not remember whether he made the statement in the Court of Addl. Sessions Judge, Rewari on 20.04.2011, but the attention of the witness was drawn towards his statement where he was examined as PW-15 in case titled as State Versus Salim etc. The witness identified his signature on the statement. He denied the suggestion to the effect that he stated in the Court that accused put the cash chest in the Max jeep with the help of rope and clothes, but he was confronted with statement dated 20.04.2011, where it is so stated. He further denied the suggestion that he identified the accused Mubin s/o Jaimal and Salim on 20.04.2011 in the Court during trial, but he was again confronted with his statement dated 20.04.2011, where it is so recorded. He again denied the suggestion that due to bad relations with owner of the Petrol Pump, he had deposed falsely.

During cross-examination by learned defence Counsel, this witness stated that he is not under any pressure to make the statement before the Court as a summoned witness.

PW-8 Virender deposed that he is working as a salesman on Aravali Filling Station, owned by Kailash Yadav for the last 4-5 years and Lalan was his co-worker. On 07.11.2010, he along with Lalan was on duty at the Filling Station. At about 12:00 AM in the night, a Max jeep reached for getting the fuel. He went outside to attend the vehicle, but after pouring fuel, when he demanded the money, occupants of the jeep overpowered him and was made to sit inside the Jeep. Thereafter, miscreants went towards Lalan and he was also overpowered by them at gun point and an amount of ₹ 6000/- along with mobile phone were snatched and then they locked Lalan inside the room. Miscreants also snatched ₹ 4300/- from this witness and put the currency chest in the Max jeep. During this period, nobody from neighborhood came there and miscreants fled towards Rewari. He made a telephonic call on 100 number and also intimated the owner of the Petrol Pump. The miscreants also made him along with Lalan to sit in the Jeep and gave beatings. After some distance, both were thrown out from the running Jeep and they fled away towards Rewari. He had seen the accused, present in the Court and identified as one of the miscreants, who had robbed the cash chest from the Petrol Pump and gave them beatings.

During cross-examination, this witness stated that he cannot tell the registration number of the Max Jeep as the same was in Hindi. About 8-10 persons were sitting in the Jeep, but he cannot tell the exact number of the miscreants. He further stated that all the miscreants alighted from the vehicle at one time, but the attention of the witness was drawn to his statement recorded under Section 161 Cr.P.C., wherein it is mentioned that two persons

alighted from the vehicle and rest remained in the Jeep. Further stated that he does not know the name and address of the miscreants. Denied the suggestion that owner of the Pump Kailash Chand had told him about the accused, present in the Court. Further stated that police recorded his statement at the spot at about 12:30 AM in the night. Also stated that he was called by the police at Police Station Sadar, Rewari to identify the Max Jeep and thereafter, he was never called in the Police Station for any test identification parade. He further stated that Sunil reached at the spot after hearing the noise of quarrel, but he denied the suggestion that quarrel had taken place due to filling of less quantity of diesel.

PW-9 S.I. Desh Raj, Police Station Khol deposed that on 20.01.2012, he was posted as Sub Inspector at Police Station Khol and on that day, case file was handed over to him for further investigation. On 23.04.2012, accused-Mubin @ Rama (appellant), present in the Court, was taken on remand with the permission of the then Illaqa Magistrate. During interrogation, he suffered disclosure statement (Ex.PG) regarding his involvement in the present case and in furtherance thereof, demarcated the place of occurrence, vide memo (Ex.PH). This witness identified the signature of Inspector Rajesh Kumar, the then SHO, P.S. Khol on the report under Section 173 Cr.P.C.

During cross-examination, this witness stated that accused was nominated in the present case on the basis of disclosure statements of accused-Salim as well as of Mubin.

PW-9 S.I. Desh Raj was re-called for further examination and deposed that on 07.11.2010, he was posted as S.I. at Police Station Khol and

on that day, after receipt of written complaint (Ex.PC) from ASI Suraj Bhan through HC Dinesh Kumar in the police station, he recorded formal FIR (Ex.PQ) and made endorsement (Ex.PQ/1).

Thereafter, during further cross-examination, this witness stated that complaint was received at about 05:00 AM and returned the same at about 05:30 AM, but denied the suggestion that FIR is ante-timed.

PW-10 Mukesh Kumar, Photographer deposed that on 07.11.2010, he reached at Aravali Filling Station on asking of the police and clicked four snaps (Ex.P-2 to Ex.P-5).

During cross-examination, this witness denied the suggestion that he had tampered the snaps.

PW-11 ASI Suraj Bhan deposed that on 06.11.2010, he was posted as ASI, Incharge, Police Post Kund and in the intervening night of 6/7.11.2010, when he was on patrolling duty along with HC Dinesh on a motorcycle, then he received an information that dacoity had taken place at Aravali Filling Station, Kund. Thereafter, he reached at the spot along with HC Dinesh, where owner of the Petrol Pump, namely, Kailash Chand was present along with his Salesmen. Kailash Chand moved a complaint (Ex.PC) to him and after recording the police proceedings (Ex.PC/1), the same was sent to Police Station for registration of an FIR. Rough Site Plan (Ex.PJ) of the place of occurrence was prepared and statements of eye-witnesses were recorded. On the same day, he received an information that currency chest, which was looted from the Petrol Pump, was recovered by the Police Station Alwar under Section 102 Cr.P.C. On 08.11.2010, he along with Kailash Chand, complainant as well as HC Dinesh Kumar reached at Police Station

Sadar, Alwar and complainant identified the chest, vide memo (Ex.PD), duly signed by HC Dinesh as attesting witness. Thereafter, on 09.11.2010, he moved an application in the Court of learned JMIC, Alwar for transfer of currency Chest (Ex.P-1) and which was taken into possession, vide memo (Ex.PE). He also prepared the rough Site Plan (Ex.PL) of the place from where the Chest was taken into possession, then, it was entrusted to MHC and thereafter, he was transferred to Police Line.

During cross-examination, this witness stated that he had received the information from P.P. Kund on his mobile phone at about 12:30 AM. Further stated that an information was received from CIA Incharge, Rewari regarding the recovery of chest by P.S. Sadar, Alwar. He denied the suggestion that Site Plans (Ex.PJ and PL) were prepared while sitting in the Police Post. He acknowledged that only an information was received about the currency chest and not about the accused. Further stated that at the time of taking into possession the currency chest, no information about the accused was given to him by P.S. Sadar, Alwar. He denied the suggestion that such types of currency chests are easily available in the market. Also stated that in the morning of 08.11.2010, he called the complainant to identify the currency chest. Thereafter, complainant accompanied the police officials to Police Station Sadar, Alwar on that day and came back in the evening as the orders of *Superdari* were not passed by the Court concerned.

PW-12 ASI Ved Parkash deposed that on 18.12.2010, he was posted as S.I., P.S. Khol and on that day, he interrogated accused-Salim and during interrogation, he suffered disclosure (Ex.PM) regarding his involvement in the present case along with Mubin, r/o Palpur (appellant) and other accused

mentioned therein. In furtherance of disclosure statement, accused-Salim demarcated the place of occurrence, vide memo (Ex.PN) and which were signed by EASI Dharambir as well as Kailash Chand, respectively. He also recorded the statements of the witnesses.

During cross-examination, this witness stated that accused-Salim was taken by him on production warrant on 18.12.2010. Further stated that disclosure of accused-Salim was recorded at Police Post in the Court complex and he tried to join the public witness during investigation, but no one was ready to join the same.

PW-13 ASI Bhisham Kumar deposed that on 18.11.2010, he was posted as Incharge, P.P. Kund and on that day, he had taken into possession Max Jeep No.HR-47-B-2296 vide recovery memo (Ex.PA), which was in the custody of Police Station Rampura in FIR No.187 of 2010, under Section 379, IPC. Memo (Ex.PA) was signed by MHC Suresh and HC Dinesh as attesting witnesses.

PW-14 HC Manoj Kumar deposed that on 23.04.2012, he was posted at P.S. Khol and on that day, he joined investigation with ASI Desh Raj and interrogated accused-Mubin (appellant), present in the Court. During interrogation, he suffered disclosure statement (Ex.PG) regarding his involvement in the offence. Further stated that in pursuance of the disclosure, accused demarcated the place of occurrence, vide memo (Ex.PH) and he signed the same as attesting witness.

During cross-examination, this witness stated that accused was taken into custody from the Court of learned JMIC, Rewari and his disclosure was recorded in the Guard Room of Court Complex at about 12:30 PM on

23.04.2012 and police officials were present at that time, but no independent witness was there. It took about one and half hours for recording the disclosure and thereafter, this witness along with accused again went to the Court of learned JMIC, Rewari. The accused had disclosed the names of his accomplices i.e. Javed @ Jaba, Tundu, Mubin s/o Jaimal, Asan, Atti etc., but he could not remember the names of remaining co-accused.

PW Constable Hans Raj along with remaining prosecution witnesses were given up being unnecessary.

The entire incriminating material was put to the appellant/accused under Section 313 Cr.P.C., but he denied the same and claimed innocence on account of his false implication however, no defence evidence was led by him.

Learned trial Court, after taking into consideration the entire material available on record, found the appellant guilty for the offences punishable under Sections 395 & 342, IPC and sentenced him in the terms as mentioned above in opening para of this order.

It is contended on behalf of the appellant that there is no cogent evidence on record to prove the charges against him, rather he has been convicted merely on the basis of surmises and conjectures. Further contended that there are material contradictions in the testimonies of prosecution witnesses, which make the case wholly doubtful. Also contended that there is no recovery in pursuance of the alleged disclosure statement of the appellant, therefore, the same cannot be construed as substantive piece of evidence. Lastly contended that in case this Court is not convinced on the merits of the case, the sentence of the appellant be reduced to the period already undergone by him in view of the facing the criminal proceedings for the last

approximately nine years.

On the other hand, learned State Counsel has opposed the contentions raised on behalf of the appellant and submitted that there is sufficient material on record to prove the charges against him and thus, rightly convicted by learned trial Court for the offences punishable under Sections 395 and 342, IPC. Also submitted that the appellant does not deserve any leniency on the quantum of sentence keeping in view the fact that he has committed the heinous crime.

Heard learned Counsel for the parties and perused the paper-book.

As per the case of prosecution, there are three eye-witnesses in this case, namely, Lalan, Sunil @ Sonu and Virender, (PW-6, PW-7 and PW-8), respectively and they have duly proved the occurrence on the basis of their unequivocal depositions, fully corroborated by other remaining witnesses including complainant (PW-5) as well as Investigating Officer (PW-9). As per the testimonies of the above eye-witnesses, the appellant along with other co-accused came at the Aravali Filling Station, run by Kailash Chand (PW-5), in a Max vehicle in the intervening night of 06/07.11.2010 at about 12:00 AM, got filled the diesel for ₹ 500/-, but one salesman-Virender (PW-8) demanded the amount, he was put in the vehicle and snatched ₹ 4300/- from his pocket. Another salesman-Lalan (PW-6) was also robbed while snatching an amount of ₹ 6000/- along with his mobile phone by the accused including the appellant. They have also taken away the Godrej Safe along with an amount of ₹ 1,96,000/- lying therein in their vehicle, thus, they robbed the total sum of ₹ 2,06,300/- along with other articles i.e. Mobile and Safe on the National

Highway in a daredevil manner. It has also come in the testimonies that the miscreants were total ten in numbers and the appellant along with other co-accused (co-convicts) have been duly identified by all three eye-witnesses as they remained present at the time of occurrence for about half an hour and even the Max vehicle, used by them in the commission of crime, was also a stolen one involved in FIR No.187 dated 22.10.2010, registered for the commission of offences punishable under Sections 379 and 420, IPC at Police Station Rampura, District Rewari. No doubt, the fire-arm was not recovered during investigation by the police, but Virender, salesman (PW-8) has specifically stated that weapon was put on his temple by one of the miscreants during occurrence. Even Lalan, another salesman (PW-6) has also stated in the similar terms before learned trial Court that at the gun point, he was overpowered and currency notes along with mobile were snatched from him. Again Sunil @ Sonu (PW-7) has also deposed on similar lines to the effect that two of the miscreants caught him and made to sit in the office at gun point and thereafter, they put the Safe in the Max vehicle with the help of ropes and clothes. Even the owner of Petrol Pump, namely, Kailash Chand (PW-5) has also corroborated the prosecution case as narrated in the complaint and identified the Currency Chest. S.I. Desh Raj, Investigating Officer (PW-9), has also proved the disclosure statement and memo of demarcation. The Chest containing the currency, belonging to the complainant-Kailash Chand, which had been looted by the miscreants, was duly recovered under Section 102 Cr.P.C. by the Alwar Police and thereafter, the same was taken into possession in the present case for the purpose of investigation in terms of order dated 09.11.2010, passed by learned Judicial Magistrate, Alwar. It has also been

proved that keys of the Chest remained with the complainant and the same was opened by the miscreants with the help of a gas-cutter. The bundles of currency notes along with slip of Aravali Filling Station, recovered from co-accused/convict Mubin son of Jaimal, were also identified and have been duly proved. Even a cheque, issued in favour of the Aravali Filling Station, was also recovered and that is also a relevant document in this case to connect the chain of circumstances. The Max vehicle bearing registration No.HR-47-B-2296, which was used by the appellant along with other co-accused was stolen by them and used in the commission of crime, was duly identified by the prosecution witnesses including its registered owner. It has also come on record that said vehicle was released in favour of registered owner, on *Superdari*, vide order dated 22.11.2010, passed by learned JMIC, Rewari.

Co-accused/convict Saleem was arrested in FIR No.187 dated 22.10.2010, registered for the commission of offences punishable under Sections 379 and 420, IPC at Police Station Rampura for theft of the above Max vehicle, which was used in the commission of crime and he suffered disclosure statement before ASI Vijay Pal (the then Head Constable) regarding his involvement in the present occurrence as well as other criminal cases. Thereafter, he was taken on production warrant in the present case and during interrogation by ASI Ved Parkash (PW-12), he suffered disclosure statement (Ex.PM) and demarcated the place of occurrence.

Another co-accused/convict Mubin son of Jaimal was arrested on 11.01.2011 by ASI Sarjeet Singh and during interrogation, suffered disclosure statement and on the basis thereof, two bundles of currency notes in denomination of ₹ 100/- amounting to ₹ 20,000/- including a blank cheque

and one invoice were duly recovered and taken into police possession. The Max vehicle bearing registration No.HR-47-B-2296, which was used in the crime, was also taken into police possession. Rough Site Plan showing the recovery of currency notes along with other articles was prepared by ASI Sarjeet Singh. Immediately, after the occurrence, currency chest was found at an isolated place within the jurisdiction of Police Station Sadar Alwar and the same was also taken into possession by them under Section 102 Cr.P.C. while following due procedure. Record reveals that an intimation was received at Police Station Khol and chest was duly identified and it was found that currency notes worth ₹ 1,96,000/- lying therein were taken out by the accused including appellant after cutting the chest with the help of a gas-cutter as the key of the same was not with them, rather it remained with the complainant (PW-5). The photographs of the place of occurrence have also been duly proved by Mukesh Kumar, Photographer (PW-10).

Appellant-Mubin @ Rama was taken on remand by S.I. Desh Raj (PW-9) on 23.04.2012 and upon interrogation, he suffered a disclosure statement (Ex.PG) regarding his involvement in the present case and in furtherance thereof, demarcated the place of occurrence, vide memo (Ex.PH).

In view of the facts and circumstances, discussed hereinabove, this Court is of the opinion that although there are minor discrepancies in the testimonies of some of the prosecution witnesses, but these are absolutely insignificant and the prosecution has proved the charges against the appellant beyond reasonable doubt. Thus, the conclusion drawn by learned trial Court is based on cogent evidence and after re-evaluation of the entire material available on record, this Court does not find any infirmity or illegality worth

consideration with the findings of guilt recorded by learned trial Court against the appellant.

No doubt, learned Counsel for the appellant made a submission for taking a lenient view to reduce the sentence of the appellant for the period already undergone by him while raising the plea of facing criminal proceedings for the last almost nine years, but this Court is not inclined to accept the same in view of the sentence being commensurate with the gravity of the offence.

Now-a-days, the highways are the lifeline of the country and there should be a sense of security as well as safety instilled in the mind of the commuters for 24 hours and to thwart the element of scaredness emanating from such types of barbaric incidents, deterrence to the spoilers is necessary. Therefore, showing any type of leniency to the appellant would not only give a wrong message to the Society at large, but also frustrate the very idea of maintenance of rule of law. Hon'ble Supreme Court in a case reported as **(2010) 5 SCC 63, 'Ram Babu Versus State of Uttar Pradesh'**, while dealing with an appeal arising out of a case of dacoity, committed in the year 1980, on the quantum of sentence, in para 22, observed as under:-

“It was submitted by learned counsel for the appellants that the incident is of 1980 and the appellants have already undergone half the sentence and their sentence be reduced to already undergone. We are not impressed by this submission. Dacoity is a daredevil act. Most of the time, a serious crime like dacoity is committed by unknown persons and it is very difficult to trace them and still difficult to secure their conviction. As a matter of fact, looking to the nature of crime and the manner in which the appellants looted temple properties, graver punishment was

warranted. In any case, sentence of five years' rigorous imprisonment awarded by the trial court and confirmed in appeal by the High Court for the offence under Section 395 IPC calls for no interference.”

As a result thereof, there is no merit in the present appeal and the same is dismissed.

Since the sentence of the appellant was suspended by this Court, vide order dated 08.09.2015 and now with the dismissal of the appeal, the same stands revoked. In case, the appellant is on bail in terms of above order, he is directed to surrender before learned Chief Judicial Magistrate, Rewari within 30 days from the receipt of certified copy of this order. On failure, learned Chief Judicial Magistrate, Rewari is directed to take coercive steps for securing the custody of the appellant and he will serve the remaining portion of the sentence.

October 16, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>